



U.S. OFFICE OF SPECIAL COUNSEL

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March 10, 2010

XXXXXXX

OSC File No: AD-10-XXXX

Dear Ms. XXXX:

This letter is in response to your request for an opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue advisory opinions under the Act. Specifically, you ask whether the Hatch Act would prohibit Mr. XXXX from serving as a member of the California First Citizens Redistricting Commission (Commission). Mr. XXXX is an employee of XXXX. As explained below, the Hatch Act would not prohibit Mr. XXXX from serving on the Commission.

The Hatch Act governs the political activity of federal executive branch employees, including XXXX employees. See 5 U.S.C. §§ 7321-7326. Employees covered by the Hatch Act are prohibited from engaging in certain political activities. For instance, employees may not, among other things, use official authority or influence to interfere with or affect the result of an election; be candidates for public office in a partisan election; or engage in political activity while on duty and/or in a room or building occupied in the discharge of official duties. 5 U.S.C. §§ 7323-7324. Political activity is described as activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. 5 C.F.R. § 734.101. However, the Hatch Act permits covered employees to engage in nonpartisan activities. To illustrate, employees can participate in the nonpartisan activities of a civic, community, or similar organization; and participate in public affairs. 5 C.F.R. § 734.203.

We understand that the Commission is a new 14-member body that was created by the Voters First Act.¹ The Commission is charged with redrawing California's Senate, Assembly, and State Board of Equalization districts based on information gathered during the 2010 census. The Commission must draw the district lines in conformity with strict, nonpartisan rules designed to create districts of relatively equal population that will provide fair representation for all Californians. To become a member of the Commission, registered voters in California submit an application, and ultimately, the California State Auditor will randomly draw the names of the first eight members of the Commission. Thereafter, the first eight members of the Commission will select the final six members from the applicant pool.

¹ Information about the Commission is derived from the Commission's website, found at www.wedrawthelines.ca.gov. The 14-member Commission will comprise of five members who are registered Democrats, five members who are registered Republicans, and four members who are neither a Democrat nor Republican.

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Based on the information above, Commission members will be performing nonpartisan duties. As such, the Hatch Act would not prohibit Mr. XXXX from serving as a member of the Commission.²

Please contact me at (800) 854-2824 or (202) 254-3609 if you have any questions concerning this matter.

Sincerely,

Mariama Liverpool
Senior Attorney
Hatch Act Unit

² Please note, even if Commission members engage in partisan activities, Mr. XXXX can serve on the Commission if he is a less restricted employee under the Hatch Act, and as long as he does so when, for example, he is not on duty, in a federal building, using a government vehicle, or wearing a government uniform or insignia.